

AIA® Document A133™ – 2009

Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

AGREEMENT made as of the _____ day of _____ in the year _____
(In words, indicate day, month and year.)

BETWEEN the Owner:
(Name, legal status and address)

Lewis and Clark County
316 N. Park Avenue
Helena, MT 59623

and the Construction Manager:

Sletten Construction Company
1000 25th Street North
Great Falls, MT 59401

for the following Project:

Lewis and Clark County Detention Facility Renovation and Law and Justice Center
Building Renovation
221 Breckenridge/406 Fuller Avenue
Helena, MT 59601

The Architect:
(Name, legal status and address)

Slate Architecture
1470 North Roberts Street
Helena, MT 59601

The Owner's Designated Representative:
(Name, address and other information)

Audra Zacherl, Assistant Director
Lewis and Clark County Public Works
3402 Cooney Dr.
Helena, MT 59602
(406) 447-8035
Shane Swandal
Hulteng CCM Inc.
6417 Trade Center Ave
Billings, MT 59101
(406) 655-1116

The Construction Manager's Designated Representative:
(Name, address and other information)

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

AIA Document A201™–2007, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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Tony Ewalt, Senior Vice President
Sletten Construction Company
1000 25th Street North
Great Falls, MT 59401
(406) 761-7920

The Architect's Designated Representative:

(Name, address and other information)

Scott Cromwell, AIA
Slate Architecture
1470 North Roberts Street
Helena, MT 59601
(406) 457-0360

The Owner and Construction Manager agree as follows.

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 The Contract Documents

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions) and any riders thereto, Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement, Bid/Proposal documents, Construction Manager's proof of payment and performance and payment bonds and proof of insurance, and Modifications issued after execution of this

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Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 2.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 2.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern. When amendment of the Contract Documents is necessary because of a modification to the total project budget (including alternates if any) or a change in the Date of Substantial Completion or Final Completion, written modification of the Contract Documents shall be approved only by the Owner's Board of County Commissioners and signed by Owner's authorized representative and Contractor. All other amendments of the Contract Documents shall be approved and signed by Owner's authorized representative and Contractor.

§ 1.1.1 The Construction Manager (or GC/CM) has been provided a copy of the Agreement Between Owner and Architect (AIA B 101-2007) and the General Conditions of the Contract for Construction and any riders thereto and Supplemental Conditions, which together are included in the contract documents. The Construction Manager acknowledges that such documents have been reviewed and understands those references to the duties and responsibilities of the Construction Manager contained therein. The Construction Manager understands and acknowledges that the Owner has decided to utilize an alternative project delivery method for the Project, which it has determined to be based on a General Contractor Construction Manager Contract between the Owner and a Construction Manager at Risk ("Construction Manager") or ("CMAR").

§ 1.2 Relationship of the Parties

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Construction Manager's skill and judgment in furthering the interests of the Owner; to furnish efficient construction administration, management services and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents. The Construction Manager is an independent contractor of the Owner.

§ 1.3 General Conditions

During the Construction Phase of this Project, the Construction Manager's responsibilities to the Owner shall be as set forth in this Agreement and in AIA Document A201 – 2007 "General Conditions of the Contract for Construction" and any riders thereto and any Supplemental Conditions which are incorporated herein by reference (hereinafter collectively referred to as "AIA Document A201"). For the Preconstruction Phase, or in the event that the Preconstruction and Construction Phases proceed concurrently, AIA Document A201, including any riders thereto and the Supplemental Conditions, shall apply to the Preconstruction Phase only as specifically provided in this Agreement. The term Contractor as used in the AIA Document A201 shall mean the Construction Manager or CMAR. Any reference to AIA Document A133-2009 in any document applicable to the Project shall mean such AIA document as modified herein. If any provisions of AIA Document A201, including any riders thereto and the Supplemental Conditions, are in direct conflict with any provision of this Agreement or of the Owner/Architect Agreement between the Owner and Architect with respect to this Project, the provisions of this Agreement as amended shall control.

§ 1.4 Preconstruction and Construction Phases of Work

The Parties acknowledge and agree that the Construction Manager will provide services for the Preconstruction Phase, which shall run through Bidding Phase. The Parties agree and acknowledge that the Project may proceed with a phased or sequential bidding process and that Portion of the Project may enter Construction Phase while other portions of the Project remain in the Preconstruction Phase.

ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 2.1 and 2.2. The Construction Manager's Construction Phase responsibilities are set forth in Section 2.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of

the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

§ 2.1 Preconstruction Phase

§ 2.1.1 The Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other.

§ 2.1.1.2 Additional Pre-Construction Phase Responsibilities

Construction, or any portion of Construction, will not commence until plans and specifications have been submitted to and approved as required by statute and regulation and any state, local, or governing body having jurisdiction over the Project or any portion of it.

§ 2.1.2 Consultation

The Construction Manager shall schedule and conduct meetings with the Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work. The Construction Manager shall advise the Owner and the Architect on proposed site use and improvements, selection of materials, and building systems and equipment. The Construction Manager shall also provide recommendations consistent with the Project requirements to the Owner and Architect on constructability; availability of materials and labor; time requirements for procurement, installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions. In reviewing the Contract Documents, Construction Manager shall endeavor to detect any errors, omissions, or inconsistencies in the design or other documents which affect the performance or constructability of the Work. Construction Manager shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require. It is recognized that the Construction Manager's review is made in the Construction Manager's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 2.1.3 When Project requirements in Section 3.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities and identify items that could affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered well in advance of construction; and the occupancy requirements of the Owner.

§ 2.1.4 Phased Construction

The Construction Manager shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, or phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities and procurement and construction scheduling issues.

§ 2.1.5 Preliminary Cost Estimates

§ 2.1.5.1 Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume or similar conceptual estimating techniques for the Architect's review in cooperation with the Owner's Representative, for the Owner's approval. If the Architect or Construction Manager suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

§ 2.1.5.2 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, estimates of the Cost of the Work of increasing detail and refinement and allowing for the further development of the design until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. Such estimates shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect when estimates of the Cost of the Work exceed the latest approved Project budget and make recommendations for corrective action.

§ 2.1.5.3 Construction Manager and Architect shall compare their estimates at each stage and shall review portions of their estimates that are materially different from one another. Construction Manager and Architect shall determine the cause of the differences, correct any errors and reconcile their estimates. Architect and Construction Manager shall promptly notify Owner in the event they are unable to agree on a reconciliation of the estimates or if the probable construction costs exceed the Owner's construction budget, and the Construction Manager shall make recommendations for corrective action.

§ 2.1.6 Subcontractors and Suppliers

The Construction Manager shall develop bidders' interest in the Project. The GC/CM shall prepare and implement a subcontracting plan which provides for participation for qualified local businesses.

§ 2.1.7 The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered well in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered well in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

§ 2.1.8 Extent of Responsibility

The Construction Manager shall use qualified and experienced professionals and exercise reasonable care in preparing schedules and estimates. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require.

§ 2.1.9 Notices and Compliance with Laws

The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities and all policies and procedures of Owner, including its tobacco-free, drug-free, anti-discrimination, anti-harassment, and weapons-free policies applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi-governmental authorities for inclusion in the Contract Documents.

§ 2.1.10 Overview of Services

The Construction Manager will, in addition to any other services set forth under Paragraph 2.1 provide the following Preconstruction services:

1. Consult with, advise, assist, and provide recommendations to the Owner and Architect on all aspects of the planning and design of the Work.
2. Provide information, estimates, and participate in decisions regarding construction materials, methods, systems, phasing, and costs to assist in determinations that are aimed at providing the highest quality building within the Owner's budget and schedule.
3. Review in progress design documents as supplied by the Architect and provide input and advise on construction feasibility, alternative materials, and availability of materials and equipment; Review completed design documents and suggest modifications to improve completeness and clarity.
4. Provide input regarding the current construction market bidding climate, status of key subcontract markets, etc.; Recommend division of work to facilitate bidding and award of trade contracts, considering such factors as bidding climate, improving or accelerating construction completion, minimizing trade jurisdictional disputes, and related issues.
5. Develop and continuously monitor the Project GANTT schedule and recommend adjustments in the design documents or construction bid packaging to ensure completion of the Project in the most expeditious manner possible, while addressing and meeting schedule requirements.
6. Prepare construction cost estimates for the Project at appropriate times throughout the design phases of the work; notify the Owner and Architect immediately if the provided construction cost estimates appear to be exceeding the Owners' budget.

7. Attend meetings of the Board of County Commissioners, at the Design Development, Construction Documents, Bidding Phase, as Construction Phase or Phases as coordinated with the Owner and Architect. The Construction Manager shall report to Owner's Board of County Commissioners at Owner's request, information regarding the quality of the Work performed.
8. Assist the Architect to the extent requested by the Architect within the areas of responsibility of the Construction Manager in the submission of the Construction Documents to the specific state and local agencies having jurisdiction over the Project, including but not limited to review under §20-6-622, MCA and in securing written approval from those agencies.
9. With the assistance of Owner and Architect determine the number and nature of the bid packages to be placed for bid, open the bid on behalf of the Owner using a process determined by the Construction Manager and following a review of the bids conducted with the Architect and a representative of the Owner, at the Owner's request, prepare a written bid analysis and recommendation for the award of the bid for presentation to the Owner, along with supporting documentation.
10. The Construction Manager with the assistance of the Architect shall prepare the advertisements for bids, as well as the necessary forms, record of bidders, plan deposits, proposals and other bidding and construction documents prior to distribution to prospective bidders. The Construction Manager shall also work with the Architect to ensure that the bid specifications and Construction Documents contain the provisions required by Montana law concerning prevailing wage (18-2403 and 18-2-422, MCA; ARM 24.16.9005), resident hiring preference (18-2-403, MCA), nondiscrimination (49-3-207, MCA), provisions required by Montana Federal law for public contracting as well as any laws or regulations imposed by local authorities.

§ 2.2 Guaranteed Maximum Price Proposal and Contract Time

§ 2.2.1 When the Architect has fully completed the plans and specifications for the Work and has the necessary governmental and other approvals, and following any ensuing bidding phase, the Construction Manager shall propose, in writing, a guaranteed maximum price (GMP), which shall include, among other items specified in the agreement (1) the sum of all of the awarded contracts for the Work and the Construction Manager's proposed reimbursable costs for any construction items or activities not included in the awarded contracts (Cost of the Work) and (2) the Construction Manager's fee. Such reimbursable costs must be approved by the Owner, and the Owner shall have the right to pay any fixed costs directly where feasible, thereby reducing the overall GMP. If the GMP proposal exceeds the Construction Manager's most recent approved cost estimate relating to any portion of the construction work, at the request of the Owner the Construction Manager at no additional cost to the Owner shall work with the Architect to bring the Project within the approved cost estimate. The Construction Manager's fee will be established by agreement between the Owner and Construction Manager in accordance with this section and Article 5 as amended.

§ 2.2.1.2 Other than any subcontracts for portions of the work approved by the Owner prior to the establishment of the GMP, if the proposed GMP is acceptable to the Owner, the Owner shall, within fourteen (14) working days, approve the GMP in writing and issue a notice to proceed to Construction manager indicating its approval of the GMP. The GMP shall be set forth in Amendment No. 1 hereto. Bids for the construction work will then be formally awarded by the Construction Manager to the bidder selected by the Construction Manager subject to prior approval of the Owner. Any bids for construction work for which the Construction Manager is also a bidder must be reviewed by the Owner and the Architect, and the selection shall be made by the Owner with the Architect's advice,

§ 2.2.2 To the extent that the Drawings and Specifications are anticipated to require further development by the Architect, the Construction Manager shall provide in the Guaranteed Maximum Price for such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

§ 2.2.3 The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include the following:

- .1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- .2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 2.2.2, to supplement the information provided by the Owner and contained in the Drawings and Specifications;

- .3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, allowances, contingency, and the Construction Manager's Fee;
- .4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and
- .5 A date by which the Owner must accept the Guaranteed Maximum Price.

§ 2.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include its contingency for the Construction Manager's exclusive use to cover those costs considered reimbursable as the Cost of the Work but not included in a Change Order. The foregoing notwithstanding, the contingency cannot be used to pay or reimburse Construction Manager for costs or expenses which Construction Manager is required to pay without reimbursement under the Contract Documents or for which Construction Manager is liable under the terms of the Contract Documents due to the fault, negligence, or default of the Construction Manager, Subcontractors, suppliers or anyone for whose acts any of them may be liable.

§ 2.2.5 The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal. In the event that the Owner and Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

§ 2.2.6 If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a total project budget (including alternates if any) by Owner's Board of County Commissioners County Commissioners at a duly-called Board meeting, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based. The Construction Manager shall be allowed a maximum of five (5) business days from notice of acceptance of a Guaranteed Maximum Price to obtain the required bond form and insurance certificates, policies and endorsements and return the same to Architect for review and transmittal to the Owner for Owner's final review.

§ 2.2.7 The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the commencement of the Construction Phase, unless the Owner provides prior written authorization for such costs.

§ 2.2.8 The Owner shall authorize the Architect to provide the revisions to the Drawings and Specifications to incorporate the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish those revised Drawings and Specifications to the Construction Manager as they are revised. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the Guaranteed Maximum Price Amendment and the revised Drawings and Specifications.

§ 2.2.9 The Construction Manager shall include in the Guaranteed Maximum Price all sales, consumer, use and similar taxes for the Work provided by the Construction Manager that are legally enacted, whether or not yet effective, at the time the Guaranteed Maximum Price Amendment is executed. The Guaranteed Maximum Price shall not include in the Cost of the Work any taxes from which the Owner is exempt.

§ 2.3 Construction Phase

§ 2.3.1 General

§ 2.3.1.1 For purposes of Section 8.1.2 of A201-2007, the date of commencement of the Work shall mean the date of commencement of the Construction Phase which shall be established by the Owner's issuance of a Notice to Proceed which included a date for the commencement of construction, or approval by the Owner of a construction schedule established by the Construction Manager in consultation with the Owner and Architect.

§ 2.3.1.2 The Construction Phase shall commence upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal or the Owner's issuance of a Notice to Proceed, whichever occurs earlier. The

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foregoing, notwithstanding, the Construction Phase cannot commence, and no construction services may be performed, until the Payment and Performance bonds, and the Construction Manager's insurance, required by the Contract Documents, have been provided by Construction Manager and approved by Owner.

§ 2.3.2 Administration

§ 2.3.2.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or by other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the Architect. The Owner shall then determine, with the advice of the Construction Manager and the Architect, which bids will be accepted. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

§ 2.3.2.2 If the Guaranteed Maximum Price has been established and when a specific bidder (1) is recommended to the Owner by the Construction Manager, (2) is qualified to perform that portion of the Work, and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Contract Time and the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount and time requirement of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 2.3.2.3 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If the Subcontract is awarded on a cost-plus a fee basis, the Construction Manager shall provide in the Subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Section 6.11 below.

§ 2.3.2.4 If the Construction Manager recommends a specific bidder that may be considered a "related party" according to Section 6.10, then the Construction Manager shall promptly notify the Owner in writing of such relationship and notify the Owner of the specific nature of the contemplated transaction, according to Section 6.10.2.

§ 2.3.2.5 The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes to the Owner and Architect.

§ 2.3.2.6 Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and submittal schedule in accordance with Section 3.10 of A201-2007.

§ 2.3.2.7 The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner. The Construction Manager shall also keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner. The log shall be available to the Owner and Architect. The Construction Manager shall maintain at the Work site, and make available for viewing by Architect and Owner, record Drawings for the Project on which the Construction Manager has noted, in a timely manner, all deviations in the Work as performed from the Drawings provided by the Architect for the Project.

§ 2.3.2.8 The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 2.3.2.7 above.

§2.3.2.9 The Construction Manager shall, on behalf of the Owner, execute and enter into all contracts with Subcontractors and shall ensure that the contracts contain all provisions required by law, including, but not limited to, compliance with provisions addressing prevailing wages (18-2-403, 422 MCA); Montana residential preferences (18-2-403, MCA), nondiscrimination (49-3-207, MCA), maintenance of records requirements (18-2-406, and 422, MCA, as amended). The Construction Manager will conform to the provisions of §15-50-206, MCA, requiring the withholding of 1% of all payments due the Subcontractors. For each contract, the Construction Manager will file the necessary forms, including the Form PC-1 and related forms, with the Montana Department of Revenue containing the information set forth in ARM 42.3 1.2121, within 10 days of the award of the contract. The Construction Manager will copy the Owner with all filings and transmittals made with or to the Department of Revenue in fulfillment of its obligations under this provision. The Construction Manager shall not add 1% to the invoices submitted to the Owner.

§2.3.2.10 The Construction Manager shall maintain the Project construction schedule incorporating the activities of the Subcontractors on the Project, including activity sequences and durations, allocation of labor and materials, and delivery of products requiring long-lead time and procurement. The Construction Manager shall maintain Shop Drawings, Product Data and Samples and other submittal material from the Subcontractors in a separate tabular schedule. The Project construction schedule shall include the Owner's occupancy requirements showing portions of the Project having occupancy priority. The Construction Manager shall update and reissue the Project construction schedule as required to show current conditions. If an update indicates that the previously approved Project construction schedule may not be met, the Construction Manager shall recommend corrective action to the Owner and Architect.

§2.3.2.11 Consistent with the various bidding documents and utilizing information from the Subcontractors, the Construction Manager shall be responsible for coordinating the sequence of construction and the assigning of space in areas where the Subcontractors are performing Work.

§2.3.2.12 The Construction Manager shall determine in general that the Work of each Subcontractor is being performed in accordance with the requirements of the Contract Documents to guard the Owner against defects and deficiencies in the Work. As appropriate, the Construction Manager shall have the authority, upon written authorization from the Owner, to require additional inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. The Construction Manager, in consultation with the Architect, may reject Work that does not conform to the requirements of the Contract Documents.

§2.3.2.13 The Construction Manager shall schedule and coordinate the sequence of construction in accordance with the Contract Documents and the latest approved Project Construction schedule, as well as schedule and coordinate any outside inspections required by law so as to avoid unnecessary delays.

§2.3.2.14 The Owner shall arrange for the delivery, storage, protection and security of Owner purchased materials, systems and equipment that are part of the Project until such items are incorporated into the Project, if such materials, systems and equipment are identified in the plans and specifications.

§2.3.2.15 The Construction Manager shall review requests for changes, assist in negotiating the Subcontractor's proposals, submit recommendations to the Architect and Owner and, if they are accepted, prepare Change Orders and Construction Change Directives which incorporate the Architect's modifications to the Documents.

§2.3.2.16 In collaboration with the Architect, the Construction Manager shall establish and implement procedures for expediting the processing and approval of Shop Drawings, Product Data, Samples and other submittals. The Construction Manager shall review all Shop Drawings, Product Data, Samples and other submittals from the Subcontractors. The Construction Manager shall coordinate submittals with information contained in related documents and transmit to the Architect and Owner those that have been approved by the Construction Manager. The Construction Manager's actions shall be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner or Subcontractors.

§2.3.2.17 The Construction Manager shall maintain at the Project site for the Owner one record copy of all Contracts, Drawings, Specification, addenda, Change orders and other Modifications, in good order and marked currently to record changes and selections made during construction, and in addition, approved Shop Drawings, Product Data, Samples and similar required submittals. The Construction Manager shall maintain records, in duplicate, of principal

building layout lines, elevations of the bottom of the footings, floor levels and key site elevations prepared by a qualified surveyor or professional engineer. The Construction Manager shall make all such records and record Drawings available to the Architect for review and upon completion of the Project shall deliver them to the Owner.

§2.3.2.18 With the Architect and the Owner's maintenance personnel, the Construction Manager shall conduct the final testing and start-up of utilities, operating systems and equipment.

§2.3.2.19 When the Construction Manager considers each Subcontractor's Work or designated portion thereof substantially complete the Construction Manager shall notify the Architect. The Construction Manager shall assist the Architect in conducting inspections to determine whether the Work or designated portion thereof is substantially complete.

§2.3.2.20 The Construction Manager shall coordinate and administer the correction and completion of the Work. Following issuance of a Certificate of Substantial Completion of the Work or a designated portion thereof, the Construction Manager shall evaluate the completion of the Work of the Subcontractors and make recommendations to the Architect when Work is ready for final inspection. The Construction Manager shall assist the Architect in making final inspections.

§2.3.2.21 The Construction Manager shall secure and transmit to the Architect all warranties and similar submittals required by the Contract Documents for delivery to the Owner and deliver all keys, manuals, record drawings and maintenance stocks to the Owner. The Construction Manager shall forward to the Architect a final Project Application for Payment upon compliance with the requirements of the Contract Documents.

§ 2.4 Professional Services

Section 3.12.10 of A201-2007 shall apply to both the Preconstruction and Construction Phases.

§ 2.5 Hazardous Materials

Section 10.3 of A201-2007, including any riders thereto and the Supplemental Conditions, shall apply to both the Preconstruction and Construction Phases.

ARTICLE 3 OWNER'S RESPONSIBILITIES

§ 3.1 Information and Services Required of the Owner

§ 3.1.1 The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems sustainability and site requirements.

§ 3.1.2 Prior to the execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Construction Manager may only request such evidence if (1) the Owner fails to make payments to the Construction Manager as the Contract Documents require, (2) a change in the Work materially changes the Contract Sum, or (3) the Construction Manager identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Construction Manager and Architect.

§ 3.1.3 The Owner with the assistance of the Architect and Construction Manager shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1.1, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner's overall budget significantly increases or the cost of the work significantly increases, the Owner and Architect, in consultation with the Construction Manager, shall thereafter, to the extent necessary agree to a corresponding change in the Project's scope and quality.

§ 3.1.4 Structural and Environmental Tests, Surveys and Reports. During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the

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Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. The Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner, except to the extent the Construction Manager knows of any inaccuracy, but shall exercise proper precautions relating to the safe performance of the Work.

§ 3.1.4.1 The Owner shall furnish tests, inspections and reports required by law and as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 3.1.4.2 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 3.1.4.3 The Owner, when such services are requested, shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 3.1.4.4 During the Construction Phase, the Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services.

§ 3.1.4.5 Documents provided by Owner shall be provided for information only and are not warranted or represented to show the conditions at the Project site accurately. Construction Manager may use the information at its own risk and shall use customary precaution relating to the performance of the Work. Notwithstanding the preceding sentences and the delivery of surveys or other documents and reports by the Owner, the Construction Manager shall perform all work in such a non-negligent manner so as to avoid damaging any utility lines, cables, pipes, or pipelines on the Property.

§ 3.1.4.5 Any additional tests, surveys, and reports reasonably requested Construction manager shall require the Owner's prior written approval.

§ 3.2 Owner's Designated Representative

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201-2007, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 3.2.1 Legal Requirements. The Owner shall furnish all legal, insurance and accounting services, including auditing services that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests. The Owner is not responsible for determining and advising Architect and Construction Manager of special legal requirements relating to the Project that differ from those generally applicable to construction. Construction Manager and Architect are responsible for retaining separate legal counsel to provide legal information and services related to their work.

§ 3.3 Architect

The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document, AIA Document B101-2007 including any additional services requested by the Construction Manager that are necessary for the Preconstruction and Construction Phase services under this Agreement. The Owner shall provide the Construction Manager a copy of the executed agreement between the Owner and the Architect, and any further modifications to the agreement.

ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 4.1 Compensation

§ 4.1.1 For the Construction Manager's Preconstruction Phase services, the Owner shall compensate the Construction Manager as follows:

§ 4.1.2 For the Construction Manager's Preconstruction Phase services described in Sections 2.1 and 2.2:
(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)

COST BASIS NOT TO EXCEED A MAXIMUM OF: (\$21,000.00) Twenty One Thousand Dollars

§ 4.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within five (5) months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.

§ 4.1.4 Compensation based on Direct Personnel Expense includes the direct salaries of the Construction Manager's personnel providing Preconstruction Phase services on the Project and the Construction Manager's costs for the mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, employee retirement plans and similar contributions which are approved by the Owner.

§ 4.2 Payments

§ 4.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed.

§ 4.2.2 Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid Thirty (30) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager.
(Insert rate of monthly or annual interest agreed upon.)

Ten % per annum

ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 5.1 For the Construction Manager's performance of the Work as described in Section 2.3, the Owner shall pay the Construction Manager the Contract Sum in current funds. The Contract Sum is the Cost of the Work as defined in Section 6.1.1 plus the Construction Manager's Fee.

§ 5.1.1 The Construction Manager's Fee:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Construction Manager's Fee.)

(4%) Four Percent, See Exhibit B

§ 5.1.2 The method of adjustment of the Construction Manager's Fee for changes in the Work:

(4%) Four Percent for GC/CM; (15%) Fifteen Percent for Subcontractor, See Exhibit B

§ 5.1.3 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:

Exhibit B

§ 5.1.3.1 The Owner shall in no event be obligated to the Construction Manager for more than the amount set forth in this Subparagraph 5.1.1 for Construction Phase payments in connection with this Project. Notwithstanding any other provisions in the Contract Documents, the basis for computing the Construction Manager's compensation under this paragraph shall specifically not include any increased contract sums necessitated by changes in the work, increased costs, or costs approved for any other reason, except where such increased sums or costs are requested or approved in writing by the Owner, and are material in nature and arise from and expanded scope of the work.

§ 5.1.4 Rental rates for Construction Manager-owned equipment shall not exceed the standard rate paid at the place of the Project.

§ 5.1.5 Unit prices, if any:

(Identify and state the unit price; state the quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price per Unit (\$0.00)
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§ 5.1.6 The sum of the Cost of the Work as defined in Subparagraph 6.1.1 below, together with the Construction Manager's Fee, is guaranteed by the Construction Manager not to exceed any GMP Amendment, and subject only to additions approved in accordance with the Agreement and the General and Supplemental Conditions made a part hereof. Such maximum sum as adjusted by approved changes in the Work is referred to herein as the adjusted Guaranteed Maximum Price. Any costs or expenses that cause the adjusted Guaranteed Maximum Price to be exceeded shall be the sole responsibility of and paid by the Construction Manager without reimbursement by the Owner.

§ 5.2 Guaranteed Maximum Price

§ 5.2.1 The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, as it is amended from time to time. To the extent the Cost of the Work exceeds the Guaranteed Maximum Price, the Construction Manager shall bear such costs in excess of the Guaranteed Maximum Price without reimbursement or additional compensation from the Owner.

(Insert specific provisions if the Construction Manager is to participate in any savings.)

§ 5.2.2 The Guaranteed Maximum Price is subject to additions and deductions by Change Order as provided in the Contract Documents, except where approval by Owner's Board of County Commissioners County Commissioners is required because of a change in the total project budget including any alternates, and the Date of Substantial Completion shall only be subject to adjustment if approved by Owner's Board of County Commissioners County Commissioners as provided in the Contract Documents.

§ 5.2.3 Should the Construction Manager complete the Project for less than the Guaranteed Maximum Price, the remaining funds shall be credited to the Owner as a deduction from the Guaranteed Maximum Price.

§ 5.3 Changes in the Work

§ 5.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Architect may make minor changes in the Work as provided in Section 7.4 of AIA Document A201-2007, General Conditions of the Contract for Construction. The Construction Manager shall be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

§ 5.3.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Section 7.3.3 of AIA Document A201-2007, General Conditions of the Contract for Construction or as provided in the Contract Documents.

§ 5.3.3 In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Section 7.3.3.3 of AIA Document A201-2007 and the term "costs" as used in Section 7.3.7 of AIA Document A201-2007, including any riders thereto and the Supplemental Conditions, shall have the meanings assigned to them in AIA Document A201-2007, including any riders thereto and the Supplemental Conditions, and shall not be modified by Sections 5.1 and 5.2, Sections 6.1 through 6.7, and Section 6.8 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

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§ 5.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in the above-referenced provisions of AIA Document A201-2007 shall mean the Cost of the Work as defined in Sections 6.1 to 6.7 of this Agreement and the term "fee" shall mean the Construction Manager's Fee as defined in Section 5.1 of this Agreement.

§ 5.3.5 If no specific provision is made in Section 5.1.2 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 5.1.2 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 6.1 Costs to Be Reimbursed

§ 6.1.1 The term "Cost of the Work" shall mean the aggregate total of all Subcontracts and Material Supply Contracts awarded for construction work in connection with the project, and any general conditions of the Construction Manager approved by the Owner in accordance with Article 2.2.1 above. The Cost of the Work does not include the Construction Manager's fee.

§ 6.1.2 Where any cost is subject to the Owner's prior approval, the Construction Manager shall obtain this approval prior to incurring the cost. The parties shall endeavor to identify any such costs prior to executing Guaranteed Maximum Price Amendment. The Owner shall be deemed to have approved such costs only if the Construction Manager has provided the Owner with a written breakdown of the costs prior to incurring such costs, and the approximate dollar amounts attributable thereto, and the Owner has approved such costs in writing.

§ 6.2 Labor Costs

§ 6.2.1 Wages of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops.

§ 6.2.2 Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site with the Owner's prior approval. Owner's prior approval; See Exhibit B
(If it is intended that the wages or salaries of certain personnel stationed at the Construction Manager's principal or other offices shall be included in the Cost of the Work, identify in Section 11.5, the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work.)

§ 6.2.3 Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

§ 6.2.4 Costs paid or incurred by the Construction Manager for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 6.2.1 through 6.2.3.

§ 6.2.5 Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, with the Owner's prior approval.

§ 6.3 Subcontract Costs

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts.

§ 6.4 Costs of Materials and Equipment Incorporated in the Completed Construction

§ 6.4.1 Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

§ 6.4.2 Costs of materials described in the preceding Section 6.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion

of the Work or, at the Owner's option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

§ 6.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items

§ 6.5.1 Costs of transportation, storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment and tools that are not fully consumed shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Construction Manager shall mean fair market value.

§ 6.5.2 Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and costs of transportation, installation, minor repairs, dismantling and removal if approved in advance by Owner. The total rental cost of any Construction Manager-owned item may not exceed the purchase price of any comparable item. Rates of Construction Manager-owned equipment and quantities of equipment shall be subject to the Owner's prior approval.

§ 6.5.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.

§ 6.5.4 Costs of document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.

§ 6.5.5 That portion of the reasonable expenses of the Construction Manager's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

§ 6.5.6 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval.

§ 6.6 Miscellaneous Costs

§ 6.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract. Self-insurance for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval.

§ 6.6.2 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Construction Manager is required by the Contract Documents to pay.

§ 6.6.3 Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 13.5.3 of AIA Document A201-2007 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 6.7.3.

§ 6.6.4 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Construction Manager's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the last sentence of Section 3.17 of AIA Document A201-2007 or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.

§ 6.6.5 Costs for electronic equipment and software, directly related to the Work with the Owner's prior approval.

§ 6.6.6 Deposits lost as a result of the Owner's negligent or intentional acts or omissions.

§ 6.6.7 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld. The Owner is responsible for legal and mediation costs, other than those arising from disputes between the

Owner and the Construction Manager, reasonably incurred by the Construction manager in the performance of the Work, only to the extent that such costs resulted from Owner's negligence or misconduct or action in which such costs incurred were taken at the direction of and with the knowledge of the Owner.

§ 6.6.8 Subject to the Owner's prior approval, expenses incurred in accordance with the Construction Manager's standard written personnel policy for relocation and temporary living allowances of the Construction Manager's personnel required for the Work.

(Paragraph deleted)

§ 6.7 Other Costs and Emergencies

§ 6.7.1 Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner.

§ 6.7.2 Costs reasonably incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section 10.4 of AIA Document A201-2007.

§ 6.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Construction Manager and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others.

§ 6.7.4 The costs described in Sections 6.1 through 6.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201-2007 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 6.8.

§ 6.8 Costs Not To Be Reimbursed

§ 6.8.1 The Cost of the Work shall not include the items listed below:

- .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 6.2, or as may be provided in Article 11;
- .2 Expenses of the Construction Manager's principal office and offices other than the site office;
- .3 Overhead and general expenses, except as may be expressly included in Sections 6.1 to 6.7;
- .4 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- .5 Except as provided in Section 6.7.3 of this Agreement, costs due to the negligence or failure of the Construction Manager, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;
- .6 Any cost not specifically and expressly described in Sections 6.1 to 6.7;
- .7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded;
- .8 Costs for services incurred during the Preconstruction Phase;
- .9 Reimbursable costs not approved by the Owner; and
- .10 Delay damages or claims or storage costs without prior written approval by the Owner.

§ 6.9 Discounts, Rebates and Refunds

§ 6.9.1 Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included them in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained.

§ 6.9.2 Amounts that accrue to the Owner in accordance with the provisions of Section 6.9.1 shall be credited to the Owner as a deduction from the Cost of the Work.'

§ 6.9.3 The Construction Manager shall take advantage of all available discounts, rebates and refunds for supplies, materials, and equipment connected with the Work and which conform to the Contract Documents, which discounts, rebates, and refunds shall accrue to the benefit of the Owner.

§ 6.10 Related Party Transactions

§ 6.10.1 For purposes of Section 6.10, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Construction Manager; any entity in which any stockholder in, or management employee of, the Construction Manager owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Construction Manager. The term "related party" includes any member of the immediate family of any person identified above.

§ 6.10.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods or service from the related party, as a Subcontractor, according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3. If the Owner fails to authorize the transaction, the Construction Manager shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3.

§ 6.11 Accounting Records

The Construction Manager shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, purchase orders, vouchers, memoranda and other data relating to this Contract. The Construction Manager shall preserve these records for a period of ten years after final payment, or for such longer period as may be required by law.

ARTICLE 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 7.1 Progress Payments

§ 7.1.1 Based upon Applications for Payment submitted to the Architect by the Construction Manager and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Construction Manager as provided below and elsewhere in the Contract Documents.

§ 7.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

§ 7.1.3 Provided that an Application for Payment is received by the Architect not later than the 25th day of a month, the Owner shall make payment of the certified amount to the Construction Manager not later than the 25th day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than thirty (30) days after the Architect receives the Application for Payment.

(Federal, state or local laws may require payment within a certain period of time.)

§ 7.1.3(a) Progress payments are due and payable to the provisions of Section 7.1.3 above unless within 21 days after receipt of the request by the Owner or the person designated in the contract by the Owner to receive the payment request, the Owner provides the Construction Manager with a written statement containing specific items in the request for payment that are being disapproved by the Owner or Architect.

§ 7.1.4 With each Application for Payment, the Construction Manager shall submit such evidence required by the Owner or Architect to demonstrate that cash disbursements already made by the Construction Manager on account of

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the Cost of the Work equal or exceed (1) progress payments already received by the Construction Manager; less (2) that portion of those payments attributable to the Construction Manager's Fee; plus (3) payrolls for the period covered by the present Application for Payment if requested by the Owner with the understanding that the Construction Manager shall maintain payroll records for the Project which shall be available to the Owner. Each Application for Payment shall also include a list, with backup data, of how each payment shall be spent, including a list detailing which subcontractors and suppliers will be paid out of funds paid by the Owner and the amount of such payments to subcontractors and suppliers, and in the next payment cycle, proof of each payment to Construction Manager's subcontractors and suppliers after payment. Prior to, or simultaneously with, the next payment cycle, Construction Manager shall furnish unconditional lien releases for each subcontractor or supplier paid under the previous payment cycle.

§ 7.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Construction Manager's Fee shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

§ 7.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed, or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Construction Manager on account of that portion of the Work for which the Construction Manager has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

§ 7.1.7 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201-2007;
- .2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 Add the Construction Manager's Fee, less retainage of five percent (5 %). The Construction Manager's Fee shall be computed upon the Cost of the Work at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .4 Subtract retainage of five percent (5 %) from that portion of the Work that the Construction Manager self-performs;
- .5 Subtract the aggregate of previous payments made by the Owner;
- .6 Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 7.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .7 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201-2007.
- .8 1% Montana Gross Receipts tax will be withheld from each pay application and remitted to the State on the contractor's behalf.

§ 7.1.8 The Owner and Construction Manager shall agree upon (1) a mutually acceptable procedure for review and approval of payments to Subcontractors and (2) the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements. Provision for release of retainage – retainage shall be released when the project receives a certificate of occupancy, and all Work has been accepted by the Owner and authority having jurisdiction.

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§ 7.1.9 Except with the Owner's prior approval, the Construction Manager shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ 7.1.10 In taking action on the Construction Manager's Applications for Payment, the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager and shall not be deemed to represent that the Architect has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 7.1.4 or other supporting data; that the Architect has made exhaustive or continuous on-site inspections; or that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ 7.1.11 The Construction Manager shall develop and implement procedures for the timely review and processing of applications for payment by Subcontractors and Material Suppliers for progress and final payments.

§ 7.1.12 Based on the Construction Manager's observations and evaluations of each Subcontractor's and Material Supplier's application for payment, the Construction Manager shall review and certify the amounts due the respective Subcontractors and Material Suppliers and shall incorporate such certified amounts into the Application for Payment developed under Subparagraph 7.1.5 above.

§ 7.1.13 The Construction Manager's certification for payment shall constitute a representation to the Owner, based on the Construction Manager's determination at the site and on the data comprising the Subcontractor's and Material Supplier's applications for payment, that, to the best of the Construction Manager's knowledge, information and belief, the Work has progressed to the point indicated and the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to minor deviations from the Contract Documents correctable prior to completion and to specific qualifications expressed by the Construction Manager in writing. The issuance of a Certificate for Payment shall further constitute a representation that the various Subcontracts are entitled to payment in the amount certified.

§ 7.1.14 If the Owner is entitled damages or any other amounts provided in the Contract Documents, including clean-up fees, then the Owner shall be entitled to deduct such damages, amounts and fees due the Construction Manager at any time.

§ 7.2 Final Payment

§ 7.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Construction Manager when

- .1 the Construction Manager has fully performed the Contract except for the Construction Manager's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201-2007, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- .3 a final Certificate for Payment has been issued by the Architect.

Except as may otherwise be provide herein, final payment shall be made by the Owner to the Construction Manager when (1) this Agreement has been fully performed by the Construction Manager and all Work completed by the Subcontractors and Material Suppliers, except for their respective responsibilities to (a) correct nonconforming Work as provided in AIA Document A201 and (b) satisfy other requirements, if any, which necessarily survive final payment; (2) a final Application for Payment and a final accounting for the Cost of the Work and General Condition Expenses have been submitted by the Construction Manager and reviewed by the Owner and/or its accountants; and (3) a final Certificate for Payment has then been issued by the Architect.

The final certificate of payment will not be issued until the punchlist is One-Hundred percent (100%) complete and all lien releases and certified payrolls have been properly processed and submitted.

§ 7.2.2 The Owner's auditors will review and report in writing on the Construction Manager's final accounting within 30 days after delivery of the final accounting to the Architect by the Construction Manager. Based upon such Cost of the Work as the Owner's auditors report to be substantiated by the Construction Manager's final accounting, and provided the other conditions of Section 7.2.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner's auditors, either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Section 9.5.1 of the AIA Document A201-2007. The time periods stated in this Section supersede those stated in Section 9.4.1 of the AIA Document A201-2007. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting. If Construction Manager fails or refuses to complete the Work, or has unsettled claims with Owner, then any Final Payment to Construction Manager shall be subject to deduction for such amounts as the Architect shall determine as the costs for completing incomplete Work and the value of unsettled claims. The amount of Final Payment shall be subtracted by amounts the Owner disputes or refuses or withholds payment.

§ 7.2.3 If the Owner's auditors report the Cost of the Work as substantiated by the Construction Manager's final accounting to be less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Section 15.2 of A201-2007, including any riders thereto and the Supplemental Conditions. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

§ 7.2.4 If, subsequent to final payment and at the Owner's request, the Construction Manager incurs costs described in Section 6.1.1 and not excluded by Section 6.8 to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager such costs and the Construction Manager's Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If the Construction Manager has participated in savings as provided in Section 5.2.1, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Construction Manager.

ARTICLE 8 INSURANCE AND BONDS

For all phases of the Project, the Construction Manager and the Owner shall purchase and maintain insurance, and the Construction Manager shall provide bonds as set forth in Article 11 of AIA Document A201-2007, including any riders thereto and the Supplemental Conditions. Performance and payment bonds shall, at a minimum, be equal to the value of the latest GMP amount.

(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201-2007, including any riders thereto and the Supplemental Conditions.)

Type of Insurance or Bond	Limit of Liability or Bond Amount (\$0.00)
----------------------------------	---

Insurance in accordance with attached Exhibit C. plus 100% Performance and Payment Bonds	Insurance in accordance with attached Exhibit C. Performance and payment bonds required in the amount of 100% of the total current GMP
--	--

§ 8.1 The Construction Manager shall not cancel or reduce coverage under any policies of insurance required hereunder either before or after completion of the Work without written consent of the Owner.

§ 8.2 The carrying of insurance shall not be deemed to release the Construction Manager or in any way diminish its liability, by way of indemnity or otherwise, as assumed by it under the Contract Documents.

ARTICLE 9 DISPUTE RESOLUTION

§ 9.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 9 and Article 15 of A201-2007, including any riders thereto and the Supplemental Conditions. However, for Claims arising from or relating to the Construction Manager's Preconstruction Phase services, no

decision by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution, and Section 9.3 of this Agreement shall not apply.

(Paragraphs deleted)

§ 9.2 MEDIATION

§ 9.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to litigation or binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Construction Manager's services, the Construction Manager may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation, litigation or by binding dispute resolution.

§ 9.2.2 The Owner and Construction Manager shall endeavor to resolve claims, disputes and other matters in question between them by mediation. A request for mediation shall be made in writing, delivered by certified mail or by service in a manner provided by applicable tribal, state and federal law, to the Owner or Construction Manager, and to the Agreement, such other parties as are necessary for resolution of all claims. The parties may, but are not obligated, to agree that mediation shall be conducted by the rules and procedures to which they and their selected mediator(s) agree, or, in the absence of such agreement, guidelines set forth in the rules and procedures set forth in the American Arbitration Association "Construction Arbitration Rules & Mediation Procedures" shall be used. The request for mediation may be made concurrently with the filing of a complaint or other appropriate demand, but in such event, mediation shall proceed in advance of litigation of other proceeding and the parties shall stipulate that proceedings other than mediation shall be stayed pending mediation for a period of not less than 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

§ 9.2.3 The mediator's fee and any filing fees shall be paid in equal shares by the parties to the mediation. The mediation shall be held at a place and time agreed to by the Owner and Construction Manager. In the event they cannot agree, then the mediator shall designate the place and time for the mediation. Agreements reached in mediation shall be enforceable as settlement agreements shall be filed in the First Judicial District Court of the State of Montana.

§ 9.2.4 If the parties do not resolve their claims, disputes or other matters pursuant to this Section 8.2, : they may pursue enforcement of this Agreement in the First Judicial District Court of the State of Montana..

☒ [x] Litigation in the First Judicial District Court of the State of Montana.

§ 9.2.5 The Construction Manager agrees to indemnify, defend and hold harmless the Owner, the Lewis and Clark County Board of County Commission, the Lewis and Clark County Sheriff, officers, and their agents and employees from and against any and all damages, losses and costs (including , but not limited to reasonable attorney fees) but only to the extent that such liability damages, losses and costs are caused by the negligence, recklessness, or intentional misconduct of the Construction Manager or for whom the Construction manager is legally liable in rendering services under this Agreement. The indemnification and defense obligations under this paragraph of the Agreement shall not be limited by any assentation or finding that Lewis and Clark County is liable for any damages by reason of a non-delegable duty.

(Check the appropriate box. If the Owner and Construction Manager do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)

☐ [] Arbitration pursuant to Section 15.4 of AIA Document A201-2007

☒ [X] Litigation in the First Judicial Court of Montana

☐ [] Other: *(Specify)*

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§ 9.3 Initial Decision Maker

The Architect, jointly with the Owner's Representative, will serve as the Initial Decision Maker pursuant to Section 15.2 of AIA Document A201-2007, including any riders thereto and the Supplemental Conditions, for Claims arising from or relating to the Construction Manager's Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker.

(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

ARTICLE 10 TERMINATION OR SUSPENSION

§ 10.1 Termination Prior to Establishment of the Guaranteed Maximum Price

§ 10.1.1 Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner, for the reasons set forth in Section 14.1.1 of A201-2007.

§ 10.1.2 In the event of termination of this Agreement pursuant to Section 10.1.1, the Construction Manager shall be equitably compensated for Preconstruction Phase services performed prior to receipt of a notice of termination only to extent of actual costs incurred by Construction Manager to third parties. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 4.1.

§ 10.1.3 If the Owner terminates the Contract pursuant to Section 10.1.1 after the commencement of the Construction Phase but prior to the execution of the Guaranteed Maximum Price Amendment, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 10.1.2:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
- .3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services. Under no circumstances shall any amount beyond amounts that are tied to actual work performed be paid to the Construction Manager.

The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager which the Owner elects to retain and which is not otherwise included in the Cost of the Work under Section 10.1.3.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 10, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will reimburse or indemnify the Construction Manager for all costs arising under the subcontract, purchase order or rental agreement, if those costs would have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner chooses not to accept assignment of any subcontract, purchase order or rental agreement that would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager will terminate the subcontract, purchase order or rental agreement and the Owner will pay the Construction Manager the costs necessarily incurred by the Construction Manager because of such termination.

§ 10.2 Termination Subsequent to Establishing Guaranteed Maximum Price

Following execution of the Guaranteed Maximum Price Amendment and subject to the provisions of Section 10.2.1 and 10.2.2 below, the Contract may be terminated as provided in Article 14 of AIA Document A201–2007, including any riders thereto and the Supplemental Conditions.

§ 10.2.1 If the Owner terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager pursuant to Sections 14.2 and 14.4 of A201–2007, including any riders thereto and the Supplemental Conditions, shall not exceed the amount the Construction Manager would otherwise have received pursuant to Sections 10.1.2 and 10.1.3 of this Agreement.

§ 10.2.2 If the Construction Manager terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager under Section 14.1.3 of A201–2007 shall not exceed the amount the Construction Manager would otherwise have received under Sections 10.1.2 and 10.1.3 above, except that the Construction Manager's Fee shall be calculated as if the Work had been fully completed by the Construction Manager, utilizing as necessary a reasonable estimate of the Cost of the Work for Work not actually completed.

§ 10.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2007, including any riders thereto and the Supplemental Conditions. In such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Section 14.3.2 of AIA Document A201–2007, except that the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 5.1 and 5.3.5 of this Agreement.

ARTICLE 11 MISCELLANEOUS PROVISIONS

§ 11.1 Terms in this Agreement shall have the same meaning as those in A201–2007.

§ 11.2 Ownership and Use of Documents

Section 1.5 of A201–2007, including any riders thereto and the Supplemental Conditions, shall apply to both the Preconstruction and Construction Phases.

§ 11.3 Governing Law

Section 13.1 of A201–2007, including any riders thereto and the Supplemental Conditions, shall apply to both the Preconstruction and Construction Phases.

§ 11.4 Assignment

The Owner and Construction Manager, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Construction Manager shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement. Except as provided in Section 13.2.2 of A201–2007, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 11.5 The Construction Manager shall itself comply with and shall notify in writing the various Subcontractors of their obligations to comply with §18-2-406, MCA in terms of giving preference to the employment of bona fide Montana residents in the work it performs under this Agreement and in paying the standard prevailing wage rate of wages, including travel allowance and fringe benefits, in effect and applicable to the operations that are conducted in performing the Work on this Project. The Construction Manager will properly classify its employees and ensure that the various Subcontractors properly classify their respective employees in accordance with the most recent Montana prevailing wage rates as established by the Montana Department of Labor prior to commencing operations under this Agreement. A copy of the applicable prevailing wage rates are contained in the Project Manual and are expressly incorporated herein by reference.

§ 11.6 No waiver of any breach of any one of the agreements, terms, conditions or covenants of this Agreement by the Owner or Construction Manager shall be deemed to imply or constitute a waiver of any other agreement, term,

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condition or covenant of this Agreement. The failure of either party to insist on strict performance of any agreement, term, condition or covenant herein set forth, shall not constitute or be construed as a waiver of the rights of either or the other thereafter to enforce any other default of such agreement, term, condition or covenant; neither shall such failure to insist upon strict performance be deemed sufficient ground to enable either party to forgo or subvert or otherwise disregard any other agreement, term, condition or covenant of this Agreement.

§ 11.7 If in any instance any provision hereof shall be determined to be invalid or unenforceable under any applicable law, such provision shall not apply in such instance, but the remaining provision shall be given effect in accordance with their terms.

§ 11.8 This Agreement may be executed in several counterparts, and each such counterpart shall be deemed an original.

§ 11.9 Time is of the essence, and the Construction Manager agrees to proceed with the provision of services under this Agreement with due diligence and without delay, in order to meet the Owner's schedule of construction and occupancy. It is expressly agreed and understood between the parties that the project must reach Substantial Completion no later than the date agreed to in writing by Owner and Construction Manager with the advice of the Architect.

§ 11.10 The Construction Manager shall reject the use of any hazardous material in the construction of the Project, including but not limited to asbestos, asbestos product, polychlorinated biphenyl (PCB) or other toxic substances. Further, if any such materials are discovered in the course of the construction, the Construction Manager shall notify the Owner immediately.

§ 11.11 In the event either party files suit to enforce their rights under this Agreement the prevailing party shall be entitled to recover its costs and attorney's fees from the other party, in addition to any other damages awarded by the court. It is understood and agreed that any suit filed to interpret or enforce any of the provision of this Agreement shall be file in the First Judicial District Court of the State of Montana.

§ 11.12 Any notices required or permitted under this Agreement or which any party elects to give shall be in writing and delivered either personally to the other party's authorized agent set forth below (or as changed by written notice); or by depositing such notice with the United States Postal Service, postage fully prepaid, to the person at the address set forth below; by certified mail, return receipt requested; or to such other address as either party may later designate in writing. Any notice given by mail as herein provided shall be deemed given when deposited in the United States Mail;

Owner:

Audra Zacherl, Assistant Director
Lewis and Clark County Public Works
3402 Cooney Drive
Helena, MT 59602

Construction Manager:

Tony Ewalt, Vice President
Sletten Construction Company
1000 25th St. North
Great Falls, MT 59401

§ 11.13 The Construction Manager shall not allow any liens to be filed against the Owner relating to the Work to be performed or labor or materials to be furnished under the Contract Documents. The Construction Manager shall indemnify and hold the Owner harmless from all liens, or claims of rights to enforce liens, against the Owner arising out of any work to be performed or labor or materials to be furnished under the Contract Documents. Neither Final Payment by the Owner nor acceptance of the Work shall constitute a waiver of this indemnity. If any lien or claim for lien shall at any time be filed, the Construction manager shall refund to the Owner all monies the Owner may be compelled to pay in discharging the lien including all costs and reasonable attorney's fees.

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ARTICLE 12 SCOPE OF THE AGREEMENT

§ 12.1 This Agreement represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Construction Manager.

§ 12.2 The following documents comprise the Agreement:

- .1 AIA Document A133–2009, Standard Form of Agreement between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
- .2 AIA Document A201–2007, General Conditions of the Contract for Construction, including any riders thereto and the Supplemental Conditions.
- .3 AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed, or the following:

N/A

- .4 AIA Document E202™–2008, Building Information Modeling Protocol Exhibit, if completed, or the following:

N/A

- .5 Other documents:
(List other documents, if any, forming part of the Agreement.)

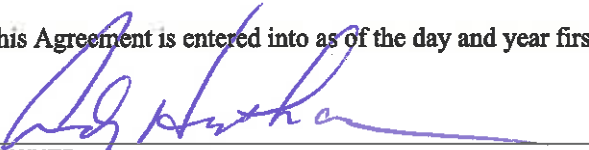
Exhibit A – Rules of site access

Exhibit B – GMP for Reimbursable Expenses (GMCR) for General Conditions, Pre-construction Fee and GC/CM fee schedule

Exhibit C – Lewis and Clark County Insurance Requirements

Exhibit D – Initial Owner Project Budget Breakdown

This Agreement is entered into as of the day and year first written above.


OWNER (Signature)

Andy Hunthausen, Chairman
Board of County Commission
(Printed name and title)


CONSTRUCTION MANAGER (Signature)

Tony Ewalt, Senior Vice President
Sletten Construction Company
(Printed name and title)

ATTEST:

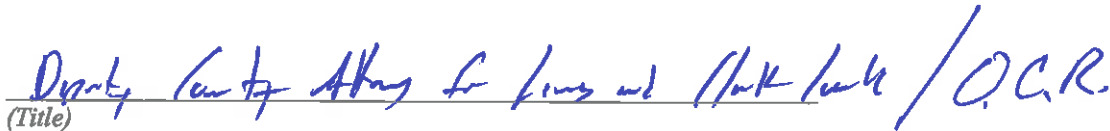
Paulette DeHart, Clerk of the Board

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, , hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 09:19:52 on 09/07/2018 under Order No. 5350359475 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A133™ – 2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.


(Signed)


(Title)

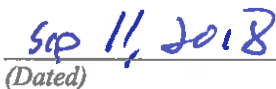

(Dated)

EXHIBIT A
SLETTEN CONSTRUCTION COMPANY
Rules of Site Access

Rules of Site Access will be outlined through meetings between the GC/CM and Sheriff department to produce a document defining all essential protocols for access throughout the detention center building and property. These finalized rules will be incorporated into this contract document as Exhibit A upon completion.

PRICE

1. Preconstruction Services Fee - Provide your firm's Preconstruction Services Fee as a maximum, not-to-exceed amount for this Project, together with hourly rates or other basis of compensation for those assigned to the preconstruction phase.

Not-to-Exceed Preconstruction Services Fee: \$21,000

The Not-to-Exceed Preconstruction Service Fee is based on the following hourly rates:

Position	Hourly Rate
Project Executive	\$85.00
Sr. Project Manager	\$79.00
Project Manager	\$75.00
Preconstruction Manager	\$78.00
Assistant Project Manager	\$48.00
Project Engineer	\$42.00
Superintendent	\$70.00
Assistant Superintendent	\$65.00
QA/QC Detention Specialist	\$72.00
Lead Estimator	\$65.00
MEP Estimator	\$62.00
MEP Coordinator	\$68.00
Safety Coordinator	\$65.00
Administration	\$30.00

2. GC/CM Fee - Provide your firm's GC/CM Fee for overhead and profit as a percentage of the Estimated Cost of Work for this Project. Assume the Estimated Cost of Work (ECOW) to be \$6,000,000. The ECOW does not include the project design/construction contingency.

GC/CM fee (% of ECOW): 4.00%

3. General Conditions Costs - Complete the attached "Guaranteed Maximum Cost for Reimbursable Expenses for General Conditions" (GMCR) worksheet.

Please refer to the completed GMCR Worksheets at the end of this section.

4. Method of Adjustment for Change Orders - The proposal shall include the method of adjustment as a single, combined percentage for the GC/CM's overhead and profit allowance for Owner-directed changes in the Work.

GC/CM Change Order Adjustments: 4.00%

5. Sub-Contractor Method of Adjustment - The proposal shall include the method of adjustment as a single, combined percentage for the limit of your subcontractors overhead and profit allowance for Owner-directed changes in the Work.

Subcontractor Change Order Adjustments: 15.00%

6. County's analysis of fees and costs (Cost Comparison): The ECOW (\$6,000,000) will be multiplied by the firm's GC/CM Fee percentage then added to the proposed General Conditions Costs and Preconstruction Services Fee to provide an overall cost comparison among the firms.

$$(\$6,000,000 \times 4.00\%) + \$371,622 + \$21,000 = \$632,622$$



PRICE - GMCR WORKSHEET

GUARANTEED MAXIMUM COST FOR REIMBURSABLE EXPENSES FOR GENERAL CONDITIONS

CONSTRUCTION RENOVATION OF THE DETENTION CENTER AND ASSOCIATED 406 FULLER AVENUE BUILDING

List the following Guaranteed Maximum Cost for Reimbursable (GMCR) expenses for General Conditions. All lines are to be completed by listing one of the following:

1. The dollar amount to be reimbursed.
2. "Included In Fee" if included in GC/CM Fee = IIF
3. "By Owner" if required but not included in GMP, GC/CM Fee or GMCR = BO
4. "Not Required" if the GC/CM determines that the service is not required for the Project = NR
5. "Cost of the Work" if the GC/CM determines that an item will be issued in a later bid pack = COW

The County will provide access to onsite construction power, access to water and restroom facilities on site. The County will pay contractor direct costs as a reimbursable for all permitting through AHJ's. The County will provide parking areas as outlined in the attached Exhibit A for the GC/CM during normal County working hours. The GC/CM will have access to any County parking areas during non-working hours.

The total of these costs shall constitute the Guaranteed Maximum Cost for Reimbursables (GMCR).

100	Personnel/organization	QUANTITY	UNIT	UNIT PRICE	GMC
1	Project Executive	52	weeks	IIF	IIF
2	Project Manager	52	weeks	1190	\$61,880
3	Assistant Project Manager	52	weeks	910	\$47,320
4	Estimator	52	weeks	IIF	IIF
5	Project Engineer I	52	weeks	NR	NR
6	Project Engineer II	52	weeks	NR	NR
7	Project Superintendent	52	weeks	2480	\$128,960
8	Business Manager	52	weeks	NR	NR
9	Safety Coordinator (project specific time only)	52	weeks	COW	COW
10	Clencial Support	52	weeks	IIF	IIF
11	Other	1	L.S.	0	\$0
12	Other	1	L.S.	0	\$0
13	Other	1	L.S.	0	\$0
	Subtotal				\$238,160



PRICE - GMCR WORKSHEET

200	All Office (Home & Field) Supplies and Expenses	Quantity	UNIT	Unit Price	GMC
1	Office and Eng. Supplies	12	month	150	\$1,800
2	Office Equipment - Rent or Depreciation	1	L.S.	750	\$750
3	Office Equipment Purchase	1	L.S.	NR	NR
4	Photo Copy	1	L.S.	250	\$250
5	Blueprints - Printing	0	sets	80	80
6	Project photos	52	weeks	IIF	IIF
7	Computer Equipment	1	L.S.	1500	\$1,500
8	FAX Charges	12	month	IIF	IIF
9	Telephone Charges	1	L.S.	NR	NR
10	Cell Phone Charges	12	month	150	\$1,800
11	Postage and Shipping	52	weeks	IIF	IIF
12	Other	1	L.S.	0	\$0
	Subtotal				\$6,100

300	Field Office Rental	Quantity	Unit	Unit Price	GMC
1	N/R				\$0
2					\$0
3					\$0
4					\$0
5					\$0
6					\$0
7					\$0
8					\$0
	Subtotal				\$0

400	Professional Services	Quantity	Unit	Unit Price	GMC
1	Data Processing	52	wks	IIF	IIF
2	Consulting Fees and Expenses	52	wks	IIF	IIF
3	Legal Expense	52	wks	NR	NR
4	Project Scheduling	12	month	IIF	IIF
5	Other	1	L.S.	0	\$0
6	Other	1	L.S.	0	\$0
7	Other	1	L.S.	0	\$0
8	Other	1	L.S.	0	\$0
9	Other	1	L.S.	0	\$0
	Subtotal				\$0

500	Project Transportation/Travel	Quantity	UNIT	UNIT PRICE	GMC
1	Costs for project based vehicles including fuel, maintenance and automobile liability insurance	52	weeks	475	\$24,700
2	Project related travel, lodging, meals, per diem, etc.	52	weeks	300	\$15,600
3	Rental equipment used on site	52	weeks	COW	COW
4	Other	1	L.S.	0	\$0
5	Other	1	L.S.	0	\$0
6	Other	1	L.S.	0	\$0
7	Other	1	L.S.	0	\$0
8	Other	1	L.S.	0	\$0
	Subtotal				\$40,300



PRICE - GMCR WORKSHEET

600	Miscellaneous Expenses	Quantity	UNIT	UNIT PRICE	GMC
1	Home Office Management Expenses	52	weeks	IIF	IIF
2	Safety equipment/PPE	52	weeks	COW	COW
3	Advertising	1	LS	IIF	IIF
4	Home Office Accounting	52	weeks	IIF	IIF
5	Performance & Payment Bonds	1	L.S.	31200	\$31,200
6	Commercial General Liability, umbrella and OCP premiums attributable to this specific Project	1	L.S.	26312	\$26,312
7	As Built Documents provided to A/E	1	L.S.	500	\$500
8	Close-out information & warranties	1	L.S.	IIF	IIF
9	O&M Manuals (3 sets)	1	L.S.	750	\$750
10	Safety/First Aid	52	weeks	75	\$3,900
11	Continuous Clean-up	52	weeks	300	\$15,600
12	Rubbish Removal	12	months	400	\$4,800
13	Final Clean-up	1	L.S.	COW	COW
14	Punch List	1	L.S.	IIF	IIF
15	Temporary Protection	52	weeks	COW	COW
16	Substance abuse testing/monitoring	52	weeks	IIF	IIF
17	Dust Control	52	weeks	COW	COW
18	Small tools for GC/CM usage on project	1	L.S.	4000	\$4,000
19	Other	1	L.S.	0	\$0
	Subtotal				\$87,062
	Total Guaranteed Maximum Cost for Reimbursables				\$371,622



Exhibit C

Supplementary Conditions

Insurance and Bonds:

Carrier Rating: A.M. Best Rating A- VI or Better

Contractors Liability- Limits of Liability

Commercial General Liability Policy:

- A. \$1,000,000 per Occurrence
\$2,000,000 Products & Completed Operations Aggregate
\$2,000,000 General Aggregate
- B. Per Project Aggregate Endorsement
- C. Blanket Waiver of Subrogation
- D. Delete the 50 foot limitation of a Railroad on the Contractual Liability Section
- E. Property Damage will include coverage for XCU
- F. Additional Insured Endorsement- Will name **Lewis and Clark County** as a **Primary Additional Insured**. The use of ISO **CG 3287& CG 3290** or its equivalent is acceptable. If the Additional Insured Endorsement does not accompany the certificate of insurance, the form numbers and edition date for the Additional Insured endorsement must be placed on the certificate.

Automobile Liability Policy:

- A. Owned/Hired/Non-Owned Autos: \$1,000,000 per Accident

Workers Compensation Policy:

- A. Statutory Workers Compensation:
- B. Employers Liability- Minimum Total Limits
\$1,000,000 Each Accident
\$1,000,000 Disease- Policy Limit
\$1,000,000 Disease- Each Employee
- C. Copy of Contractors Exemption if applicable to be also submitted.

Umbrella/Excess Liability Policy:

- A. \$1,000,000 per Occurrence/\$1,000,000 Aggregate
- B. **Lewis and Clark County** will also be an Additional Insured as follow form from Commercial General Liability Policy

Owners & Contractors Protective Liability Policy:

- A. **\$1,500,000** each Occurrence
\$3,000,000 Aggregate
- B. Contractor to obtain and pay for the entire premium for this policy and will be issued in the name of the **Lewis and Clark County**.
- C. Architect & Engineer to be named as an Additional Insured on this policy
- D. Professional Services Contract- no OCP required

Contractors Tools/Equipment:

- A. All tools/equipment leased, borrowed or owned by the Contractor will be their responsibility for insurance coverage

Cancellation/Non-Renewal Notice:

- A. Policies will be endorsed to provide 30 days notice of cancellation or non-renewed by the carrier to **Lewis and Clark County** and the Contractor

Optional Coverage's if required by Contract:

A. Professional Liability:

- 1.) Design Build Liability []
- 2.) Architects/Engineers Professional Liability []
- 3.) Limits- _____

B. Contractors Pollution Liability:

- 1.) Mold Abatement []
- 2.) Lead Paint Abatement []
- 3.) Asbestos Abatement []
- 4.) Limits- _____
- 5.) Name **Lewis and Clark County** as an Additional Insured- including Completed Operations

Builders Risk by Owner.

EXHIBIT D
SLETTEN CONSTRUCTION COMPANY
Initial Project Budget Outline

Detention Center Renovation Budget 7,700,000

Soft Costs

Design Fee (12.9%)	775,000
Design Contingency (10% of Design Fee)	75,000
County Direct Soft Costs (7% of \$7.7mil)	539,000
Permitting	45,000
System Development	55,000
Special Inspections	60,000
Commissioning	50,000
Hazardous Material Inspection & Testing	25,000
Hazardous Material Abatement	60,000

Total Soft Costs: 1,684,000

Direct Construction 5,414,400

Contingency 10% 601,600

Total Construction: 6,016,000

Law and Justice Center Remodel Budget 300,000

Soft Costs

Design Fee (10%)	30,000
Design Contingency (15% of Design Fee)	4,500
County Direct Costs	25,000
Permitting	7,500
Hazardous Material Inspection & Testing	4,500
Abatement	7,500

Total Soft Costs: 79,000

Direct Construction 198,900

Contingency 10% 22,100

Total Construction: 221,000